

OPINION
61-226

December 11, 1961 (OPINION)

STATE INSTITUTIONS

RE: Claim of County and State - Statute of Limitations

This is to acknowledge receipt of your letter dated December 6, 1961, in which you request an opinion as to the following questions:

The facts in this matter appear to be that the deceased was an inmate of the State Hospital at Jamestown, North Dakota, from 1949 until his death in 1961, and that the Board of Administration of the State of North Dakota has filed a claim against the estate of said deceased in the amount of \$11,341.36 which represents the total actual cost of his maintenance at the State Hospital. Hettinger County has also filed a claim for the county funds that have been paid in connection with the care and treatment of the deceased at the State Hospital. Furthermore, the Veterans' Administration has taken the position that the United States of America has a statutory claim for the residue of the funds of this estate derived from benefits paid under Federal Laws administered by the Veterans' Administration, by virtue of Section 3202(e), Title 38 of the United States Code, and the Veterans' Administration has also taken the position that a substantial part of the State's claim will be barred by the statute of limitations.

Your first question was whether or not the United States of America through the Veterans' Administration is entitled to receive the balance of the estate after lawful claims are paid, instead of the State of North Dakota pursuant to our escheat laws.

The Constitution and the laws of the United States made pursuant thereto are the supreme law of the land. In spite of anything in the constitution or laws of any State to the contrary, an act of the Congress of the United States is presumed to be constitutional. Without a better knowledge of all of the facts surrounding this matter, it is impossible to answer your question. Any answer to this question would be dependent upon what portion of the residue funds were derived from benefits paid to the deceased from the Veterans' Administration. In the case of *In Re Gronsky's Estate*, 79 N.D. 123, 55 N.W. 2d. 60, the court held that the estate of a deceased veteran, a patient in a Veterans' Hospital, who leaves no heirs or kin, does not escheat to the state where all of the property of the deceased originated from payments by the United States of America as retirement for his disability as a regular army person and such property consisted of United States Savings Bonds and cash. However, as previously mentioned, this question is too involved to answer without knowledge of all of the material facts.

Your second question was as follows: Whether, assuming that the total claim filed by the Board of Administration includes the funds contributed by Hettinger County, the county's claim should be paid to the county and the balance to the Board of Administration.

It would be our opinion that the County of Hettinger should be reimbursed any amount which was actually expended by the county for the care and treatment of the deceased. However, this amount is not the \$45.00 monthly (\$135.00 quarterly) statutory obligation imposed on the county by 25-02-08 of the North Dakota Century Code, which was repealed by the 1961 Legislative Assembly. It is only that amount which the county actually spent. For example, during the fourth quarter of 1956, the Liquor Tax paid 70% of the county's statutory obligation. Therefore the county should be allowed to collect 30% of their quarterly statutory obligation which would be 30% of \$135.00 or \$40.50 for that particular quarter as this is the amount that was actually expended by Hettinger County for the quarter. In order to arrive at the amount due the county for the patient's entire period of confinement, this same procedure should be employed.

Your third and last question was whether the statute of limitations will run against any of the claims filed by the Board of Administration based upon payments of cost commencing with the year 1949.

Chapter 198, Section 4, of the 1949 Session Laws provided that "The statute of limitations shall not bar the right of recovery for the expense of such treatment and maintenance at such institutions either from the patient, or his estate after his death, but this act shall not apply to claims that are already barred at the time that this act takes effect." This provision took effect July 1, 1949, and since the deceased entered the State Hospital sometime during the fourth quarter of 1949 it would appear that no part of the state's claim will be barred by the statute of limitations.

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Attorney General